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February 23, 2010

TO MIKE CANNING, UDWR, HABITAT SECTION CHIEF
CRAIG WALKER, UDWR, AQUATIC HABITAT PROJECT COORDINATOR/BRFAC MEMBERS
Cc RORY REYNOLDS, UTAH WATERSHED RESTORATION INITIATIVE
FROM CAROLINE BRADFORD
SUBJ SAMPLE EASEMENT LANGUAGE FOR CONSIDERATION BY HABITAT COUNCIL/BRFAC/UWRI

Thank you for your time and consideration of the funding request from the Habitat Council for the Ogden River Restoration project. During our presentation earlier this month, there were a few questions from members of the Habitat Council about what was going to be “allowed” within the riparian corridor that is being restored along the Ogden River. This memo is to follow up and help answer those questions by providing our “sample easement language” to the Division of Wildlife Resources. We want to share our experience on this project widely and provide a model easement for others with the need to develop similar riparian easement language for restoration projects in urban areas.

It is important to note that in the case of the Ogden River, we have actually developed a legal “property boundary” for the protection of the riparian corridor. This is very different from the more traditional approach of designating a particular number of feet for protection that is “setback from the high water mark” or other similar language. Our approach is designed to give the river its own protective property boundary—surveyed and recorded—so that future questions about setbacks or encroachments are more clearly able to be answered with the protection of the river in mind.

The easement language below was developed for the Ogden River Restoration project in collaboration with the individual property owners throughout the reach. While each of the dozens of parcels we are protecting has a separate easement document, they all have more or less the same language—with a few property owners tweaking the words in one paragraph or another.

Please feel free to circulate this language to those who have the opportunity to protect riparian parcels with this sort of approach to conservation easements throughout the West. Don’t hesitate to contact me if you have any questions. We appreciate your consideration.

STORM WATER AND RIVER RESTORATION EASEMENT [SAMPLE FROM OGDEN RIVER PROJECT]

THIS GRANT OF STORM WATER MANAGEMENT AND RIVER RESTORATION EASEMENT AND RIGHT-OF-WAY (the "Easement"), made this ____ day of _____, 20____ is by and between _____, its successors and assigns ("Grantor") and OGDEN CITY, a Utah municipal corporation, ITS SUCCESSORS AND ASSIGNS ("City"). Grantor and City are hereinafter referred to collectively as "the Parties".

WHEREAS, Grantor is the owner of certain real property located in Weber County, Utah (the "Property") which is more particularly described in **Exhibit A**, which is attached to this Easement and incorporated herein as if fully set forth; and

WHEREAS, City has proposed to make substantial improvements to the Ogden River corridor by realigning the floodway alignment, returning the river to a more natural state, and improving its capacity to receive and transport storm water thereby creating and supporting a more healthy ecosystem for river plants, fish, and other species that naturally inhabit riparian environments (the "Project"); and

WHEREAS, the changes to the Ogden River proposed as part of the Project will enhance Grantor's Property by making flooding less likely and enhancing future development potential on those Portions of the Property not needed to complete the Project; and

WHEREAS, Grantor has agreed to provide an easement to City over, through, and under portions of the Property to construct and/or to maintain the proposed storm water management facilities and river restoration features on the Property that are associated with the Project; and below;

WHEREAS, City has determined to accept the grant of the Easement subject to the provisions stated;

NOW, THEREFORE, in consideration of the Parties mutual rights, responsibilities and benefits, the Parties agree as follows:

1. Grantor hereby grants to City a perpetual easement over, across and under the area described in **Exhibit B (the "Riparian Corridor")** and shown cross-hatched on **Exhibit C** (shown on the legend as Area of the Riparian Easement), which are attached to this Easement and incorporated herein as if fully set forth, for the construction and maintenance of storm water management facilities and associated river stabilization and riparian improvements associated with the Project, including but not limited to constructing, operating, maintaining, repairing, altering, rehabilitating, removing, monitoring and replacing river banks and ecosystem

restoration features in and adjacent to the channel of the Ogden River; installing plantings and creating or modifying channels; performing bank stabilization; placing materials, structures or screening in the stream bed or banks that influence fish passage, stream velocity or channel form; removing or placing of gravel or cobbles, boulders, and other structures or conveyances to recharge ground water or maintain flows to wetlands and to enhance fish habitat; realigning the existing river parkway trail as shown on the Project plans, together with improving or creating passive or active public access areas and informational displays along the existing or realigned parkway trail; and commencing and completing each and every other modification, work, or structure deemed necessary or beneficial by City to complete the Project;

2. Grantor agrees that Grantor will not obstruct or permit anyone else to obstruct the Riparian Corridor during the term of this Easement. Except for the installation of paving, patios or other ground level hard surface improvements approved in writing by City, Grantor will not store materials or equipment, install any improvements or construct any building, structure, fence, or other obstruction of any kind in the Riparian Corridor, nor permit anyone else to store materials or equipment, install improvements, or construct any building, structure, fence or obstruction in the Riparian Corridor. Grantor further covenants not to perform or permit any fill or excavation activities or modify the final elevation or placement of any Project feature within the Riparian Corridor without City's prior written consent;

3. The Project plans identify certain areas within the Riparian Corridor as access points, concentrated river access, river access or other similar terms. The access envisioned and ultimately established, may range from points of visual access or view corridors to actual access to the river for recreation or other uses. City will install and maintain these access points when they are associated with public streets or with the existing bike path and pedestrian trail. Grantor, at its discretion, may develop the access areas within the Riparian Corridor which are not installed as part of the general public access areas, and may limit general public access to the areas it develops, after obtaining written approval from City for the design, construction and maintenance of these areas. All of Grantor's land within the Riparian Corridor shall be considered open space for purposes of calculating Grantor's open space requirements as required by Ogden City code when Grantor proposes to develop its remaining real property.

4. City will operate and maintain any pipes, trails, benches, signs, and other above ground structures installed in the Riparian Corridor as part of the Project facilities, except Grantor will repair any damage caused by Grantor's activities in the use of its land. It is the parties' understanding that those areas of the Riparian Corridor not designed for general public access or general public use will generally require little maintenance with Grantor and City cooperating to maintain and keep in good repair plantings, landscaping, vegetation and natural areas developed as part of the Project;

5. Grantor hereby grants to City a limited construction easement over and across the area described in **Exhibit D (the "Construction Easement")** and depicted on Exhibit C (shown on the legend as Area of the Construction Easement), which are attached to this Easement and

incorporated herein as if fully set forth, for access to the Project and the temporary storage or staging of equipment, supplies, and materials used to install and complete the Project improvements. The area included in the Riparian Corridor together with the Construction Easement is referred to as the Project Limits;

6. City may utilize the Construction Easement when working on nearby portions of the Project even if Grantee's Property has already been improved or has not yet been improved by the Project. Prior to exercising any right under the Construction Easement, City shall notify Grantee of its intent at least thirty (30) days before using the Construction Easement and shall cooperate with Grantee to minimize disturbance of Grantee's use of its Property. City's rights under the Construction Easement shall not interfere with Grantor's development of its Property, including but not limited to construction of new buildings or modification of existing buildings located within the Construction Easement. In the event Grantor determines, at its sole discretion, that City's use of the Construction Easement interferes with its use of land or is overly burdensome, Grantor may direct City to vacate the Construction Easement within thirty (30) days;

7. City will at all times have a right of ingress and egress over the Project Limits and the right to enter the Construction Easement or Riparian Corridor via any road, parking lot, or open non-landscaped property located within the Property or any adjacent land owned by the Grantor for the installation, construction, operation, maintenance, repair, alteration, rehabilitation, removal, replacement and monitoring of Project features and improvements;

8. City, at any time after this Easement is signed and at its own cost as part of the Project, may commence with removal or demolition of any structure, obstruction, or physical improvement or characteristic existing within the Riparian Corridor. In doing so, City shall obtain any necessary permits and comply with all laws and ordinances applicable to such work. In the event any structure within the riparian corridor is occupied, owner shall provide the occupant with no less than ninety (90) days to vacate the premises and shall immediately notify City of the fact that an occupant is present and of the date the occupancy has terminated. Grantor shall be responsible for all costs or expenses associated with any termination of occupancy within the Riparian Corridor.

9. Grantor reserves to itself, and to its heirs, successors, or assigns, all other rights and privileges that may be used without destroying, modifying or otherwise disturbing the work or improvements constructed in the Riparian Corridor or, in any manner, interfering with or abridging the enumerated rights and easement hereby conveyed and acquired;

10. No covenant or agreement contained in this Easement shall inure to the benefit of any party other than Grantor and City and their respective successors and assigns;

11. All of the covenants, agreements, and conditions contained in this Easement run with the land and shall inure to the benefit of and be binding upon the Parties and their respective successors and assigns;

12. Grantor warrants that it has the authority to enter into this Easement agreement for the land described in Exhibit A, specially warrants the easements described herein subject to any existing easements of record, and agrees to execute, acknowledge, and deliver to or for City such further instruments and take such further actions as may be reasonably required to carry out and effectuate the intent and purpose of this Easement, or to confirm or perfect any right created hereunder;

13. In the event of any breach, or threatened breach, of this Easement by either party hereto, the nondefaulting party shall have the right to any remedy available at law or in equity, including but not limited to, injunctive relief and specific performance;

14. Prior to commencing work within the Project limits, City shall obtain all necessary permits and authorizations, and comply with all laws and regulations, including stream channel alteration permits from the State Engineer and 404 (wetland) permits from the U.S. Army Corps of Engineers;

15. It is the Parties' intent that any general public access or use of the land included in the Riparian Corridor is limited to: the existing or realigned parkway trail; the areas shown on the Project plans as specifically providing physical access to the river or allowing public view access located along the realigned parkway trail; and existing rights of the public to use the water in the Ogden River. Grantor retains the right to control, limit, or refuse public access and use (without installing fences or other physical obstructions) of all other portions of the Riparian Corridor. The public access and use allowed by Grantor and described herein shall be without charge with the objective of providing Grantor the landowner liability protections set forth in Utah Code §§ 57-14-1 through 57-14-7, or its successor provisions;

16. This Easement constitutes the entire agreement between the Parties and may not be modified, amended, or terminated except by an instrument in writing signed by both of the Parties;

17. This Easement shall be recorded with the office of the Weber County Recorder and shall be governed and construed in accordance with the laws of the State of Utah and the ordinances of Ogden City;

18. Any forbearance by either the City or the Grantor in exercising any right or remedy afforded under this Easement or by law shall not be a waiver or preclude the exercising of any such right or remedy; and

19. Invalidity of any one of these terms or provisions by any Court shall in no way affect any other provisions, which shall remain in full force and effect.

WHEREFORE, the Parties have executed this Easement on the date first above written...
Signature Page for both parties to follow with Notary, ect.